



CLEAN WATER ACTION
FLORIDA



EARTHJUSTICE
Because the earth needs a good lawyer

June 17, 2013

Stanley Meiburg
Acting Regional Administrator
USEPA Region 4
61 Forsyth Street, S.W.
Mail Code: 9T25
Atlanta, GA 30303-8960

Re: Follow up on EZ-Base

Dear Acting Administrator Meiburg:

We are writing to follow up on our original letter dated March 29, 2013 (Attachment I) with regard to our request for the immediate testing of EZBase, a material made from coal combustion waste distributed by Jacksonville Electric Authority. This hazardous substance is currently being used in Florida and Georgia as fill material and road base.

We have not received a response from your office to our letter, despite the time-sensitive nature of our request. In addition, since our March request, our concern has increased as new complaints and discoveries have surfaced.

On March 20, 2013 Earthjustice took samples from a path near J.L. Wilkinson Elementary School in Clay County after reports that EZBase was applied to an adjacent road. The sample results revealed high levels of vanadium and arsenic above the state and federal standards deemed safe for residential soils in Middleburg, Florida (Attachment II).

On March 28, 2013, Clean Water Action received an unsolicited call from Scott Allen, a Middleburg, Florida homeowner. Mr. Allen discovered EZBase being applied to a road at Camp Blanding behind his home and extending behind a large residential community. While EZBase was approved for use at the Camp Blanding site, dust and runoff from applications of EZBase entered Mr. Allen's property. Mr. Allen filed a complaint and received a response from DEP (Attachment III). The EZBase site directly behind Mr. Allen's property is an ongoing problem and is still being addressed. Additionally, we share Mr. Allen's concern that his neighbors are unaware that EZBase was applied near their homes. The uncovered application of EZBase has the potential to leach hazardous contaminants into the groundwater and impact water quality of residential drinking wells.

As you may know, on May 30, 2013, Florida Governor Rick Scott signed into law the Fossil Fuel Combustion Products Act, which provides industry with unbridled use of coal ash byproducts like EZBase. For use as structural fill and pavement aggregate, DEP must be notified where, when, and what type of combustion waste is used, but reporting of the quantity applied is

not required. Clearly, the law has major flaws. Not only does it leave a wide scope of coal ash reuse applications that is too broad without providing for necessary state oversight and review, it also does not require the use of any modern testing protocols like Leaching Environmental Assessment Framework (LEAF). We would be more than happy to provide extensive details on the law's deficiencies.

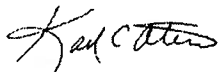
We ask that you address our concerns in the following ways:

1. Conduct LEAF and chemical constituent testing of EZBase used in road and fill applications.
2. Assign staff to participate in a phone or in-person meeting with national health and environmental organizations working in Florida on coal ash issues.
3. If LEAF or contaminant testing results confirms that EZBase leaches toxicants to the environment or contains hazardous materials at levels that create a health risk from inhalation or direct contact, we request testing of key application sites (Attachment IV).

Please send an e-mail confirmation receipt of this correspondence to Lisa Evans at levans@earthjustice and Angelique Giraud at agiraud@cleanwater.org and indicate the next step to move this issue to fruition.

We thank you in advance for your prompt attention to this matter, and we look forward to your timely response.

Respectfully,



Kathleen E. Aterno
Florida Director
Clean Water Action



Lisa Evans
Senior Administrative Counsel
Earthjustice

cc: Assistant Administrator Mathy Stanislaus, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response
Suzanne Rudzinski, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response
Secretary Herschel T. Vinyard, Jr., Florida Department of Environmental Protection
Major General Emmett R. Titshaw, Jr., Florida National Guard
Brigadier General Richard Gallant, Florida National Guard
Forest Area Supervisor, Paul Catlett, Florida Forest Service

**Clean Water Action * Earthjustice * Physicians for Social Responsibility
Southern Alliance for Clean Energy * St. Johns Riverkeeper
Waterkeeper Alliance**

By Email: Keyesfleming.gwendolyn@Epa.gov

March 29, 2013

Gwen Keyes-Fleming
Regional Administrator
USEPA Region 4
61 Forsyth Street, S.W.
Mail Code: 9T25
Atlanta, GA 30303-8960

**Re: Request to conduct Leaching Environmental Assessment Framework (LEAF) on
EZBase**

Dear Regional Administrator Keyes-Fleming:

The undersigned public health and environmental groups write to request the immediate testing of EZBase, a hazardous substance currently used in Florida and Georgia as fill material and road base. EZBase is produced by the Jacksonville Electric Authority (JEA) from fly ash and bottom ash generated from the combustion of coal. Although the waste is promoted as clean fill, there is evidence that EZBase can leach harmful chemicals to the environment. Consequently, the widespread use of EZBase near residential areas, schools, camps and water sources may pose significant health and environmental hazards in many locations throughout Florida and Georgia.

Over the last decade, however, large amounts of EZBase have been used as fill and road base on numerous locations in Georgia and Florida. Reportedly, during the 12 months from 2011 to 2012, JEA told the Florida Department of Environmental Protection it distributed about 232,000 tons in Florida, including over 40,000 tons at Camp Blanding. In 2010, the St. Johns River Water Management District used EZBase as fill in wetlands there.

Use of EZBase in or near wetlands, however, has caused documented contamination in northeast Florida. For example, JEA offered 16,000 tons of EZBase free of charge to Clay County, Florida homeowner Steve Johnson to use as road base around his residential property on Blackwater Creek on the condition that the property would be available for use as a model site to demonstrate the use of EZBase.

After application of EZBase on every road on his 30 acres of land, Mr. Johnson was visited by the Florida Department of Environmental Protection (FDEP). FDEP ordered removal of the EZBase due to its high levels of toxic contaminants and its placement on Blackwater Creek, a

protected wetland system that connects to a major drinking water source. JEA was ordered to remove only the EZBase immediately adjacent to the wetlands, but left the majority of the toxic substance for Mr. Johnson to remove on his own or keep on the property and live with the impacts. Mr. Johnson later sent samples of EZBase from his property to a certified lab, where levels of arsenic, chromium, mercury, and vanadium were detected above the state and federal maximum contaminant levels.

Yet, despite the threat of contamination from the placement of EZBase, this material has never been appropriately tested. To date, the waste has been tested with the Toxicity Characteristic Leaching Procedure (TCLP), which the US EPA has determined is not an accurate leach test for coal combustion waste. In this situation, where coal combustion waste is used "beneficially" in areas that are accessible to the public and near water resources, the precedent is for EPA to test the material using the best available science, which is the newly approved Leaching Environmental Assessment Framework (LEAF).

In fact, last year investigators from EPA Region 2 tested a similar coal combustion waste "product" called "Agremax," which, like EZBase, is used as fill and road base throughout Puerto Rico. EPA used the LEAF test to determine the extent to which AGREMAX could leach toxic heavy metals and other hazardous substances into the environment.

EPA's LEAF test revealed that numerous hazardous substances, including arsenic, boron, cadmium, chloride, chromium, fluoride, lead, lithium, molybdenum, selenium, sulfate, and thallium can leach from the waste at high levels and contaminate the local environment. Levels of arsenic, chloride, chromium and molybdenum in the leachate were particularly high. In fact, the LEAF test demonstrated that harmful chemicals, including heavy metals, are likely to leach from AGREMAX into groundwater and other water bodies at levels that far exceed current health-based standards for drinking water. A copy of EPA's report is attached to this letter as Attachment 1.

Thus it is critical for EPA Region 4 to test EZBase to determine whether it presents a similar threat to health and the environment. We request that such testing occur immediately in light of the many areas where the waste has already been placed in Florida and Georgia and the many proposals for placement at additional sites in both states. We have attached a list of the sites where EZBase has been deposited, but this list does not in any way represent complete accounting. (Attachment 2)

If you or your staff would like to discuss this request in more detail, please contact Lisa Evans, Senior Administrative Counsel, Earthjustice, (781) 631-4119, levans@earthjustice.org and Angelique Giraud, Energy Community Organizer, Clean Water Action, (561) 672-7638, agiraud@cleanwater.org.

We thank you in advance for your prompt attention to this matter, and we look forward to your response.

Respectfully,

Kathleen E. Aterno
Florida Director
Clean Water Action

Lisa Evans
Senior Administrative Counsel
Earthjustice

Lynn Ringenberg, MD
Emeritus Professor Pediatrics
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Lisa Rinaman
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St. Johns Riverkeeper

Marc A. Yaggi
Executive Director
Waterkeeper Alliance

cc: Deputy Regional Administrator Stanley Meiburg, U.S. Environmental Protection Agency
Region 4
Assistant Administrator Mathy Stanislaus, U.S. Environmental Protection Agency, Office of
Solid Waste and Emergency Response
Suzanne Rudzinski, U.S. Environmental Protection Agency, Office of Solid Waste and
Emergency Response
Secretary Herschel T. Vinyard, Jr., Florida Department of Environmental Protection
Major General Emmett R. Titshaw, Jr., Florida National Guard